Iron Workers Local 433, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* Chris Crane Company. Case 31–CC–1930

May 24, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT

On February 26, 1988, Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] as modified, and to adopt the recommended Order.

We agree with the judge that the Respondent violated Section 8(b)(4)(i) and (ii)(B) by picketing Chris Crane on September 18, 19, and 21, 1987, at the gate reserved for neutral employers. In finding this violation, we reject the Respondent's argument that the neutral gate was tainted by companies hired by the general contractor to provide jobsite services to all of its subcontractors, including Chris Crane, the primary.

Joe E. Woods, Inc., general contractor on the Paradise Market Place project, provided electrical, sanitation, telephone, food, and trash removal services to all of its jobsite subcontractors.[3] Woods arranged for its electrical subcontractor, who regularly utilized the neutral gate, to provide electrical hookups for jobsite employers. Woods contracted with a sanitation company to supply and clean portable toilets on the jobsite. The sanitation company visited the jobsite twice weekly through the neutral gate. Woods made a telephone in its offices available to all project employees. Woods also permitted one mobile caterer to enter the jobsite regularly to sell food. This caterer used the neutral gate. Finally, Woods contracted with a trash company to haul refuse from the project. Although this trash company used the neutral gate, the judge found that no pickups occurred on September 18, 19, or 21.

The Respondent apparently argues that because Woods provided these electrical, sanitation, telephone, food, and trash collection services to Chris Crane, the "related-work" doctrine applies. In *Carrier* and *General Electric*,[4] both of which involved union picketing at the plants of primary employers, the Supreme Court established the related-work doctrine under which unions lawfully can interdict contractors using a neutral gate to provide services related to the primary employer's normal operation. However, we uniformly have refused to apply this doctrine to common situs, construction industry cases. See, e.g., *Iron Workers Local 433 (Oltmans Construction)*, 272 NLRB 1182, 1186 (1984), and cases cited. Thus, while we have "given wide latitude to picketing . . . confined to the sole premises of the primary employer . . . [we have] taken a more restrictive view of common situs picketing." *Building & Construction Trades Council of New Orleans (Markwell & Hartz)*, 155 NLRB 319, 324 (1965). As the Supreme Court made clear in *NLRB v. Denver Building Trades Council*, 341 U.S. 675 (1951), its seminal common situs, construction industry picketing case, the relationship between a general contractor and its subcontractor does not destroy the independent contractor status of each.

> [T]he fact that the contractor and subcontractor were engaged on the same construction project, and that the contractor had some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other The business relationship between independent contractors is too well established in the law to be overridden without clear language doing so (Id at 689–690).

[1] The Respondent has excepted to some of the judge's credibility findings The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd 188 F 2d 362 (3d Cir 1951) We have carefully examined the record and find no basis for reversing the findings

[2] The judge incorrectly cited *Operating Engineers Local 12 (McDevitt & Street)*, 286 NLRB 1203 (1987), for the proposition that a chemical toilet service company's use of a neutral gate would not compromise a reserve gate system The Board expressly left this issue open in *McDevitt* because there was no need to decide whether the sanitation truck was a "supplier" of the primary employer The Board in that case, however, did find that the proprietor of the lunch truck that came onto the common situs through the neutral gate was not a supplier of the primary

[3] As the Respondent's counsel admitted at the hearing, most construction industry general contractors are obligated to provide these types of services to their jobsite subcontractors *Carpenters Local 1622 (Specialty Building Co)*, 262 NLRB 1244, 1246 (1982)

[4] *Steelworkers (Carrier Corp) v NLRB*, 376 U S 492 (1964), *Electrical Workers Local 761 (General Electric) v NLRB*, 366 U S 667 (1961)

Accordingly, we find that the Respondent's picketing was not privileged under the related-work doctrine.[5]

We similarly reject the Respondent's argument that the companies providing food, telephone, electrical, sanitation, and trash removal services to the Paradise Market Place jobsite were "suppliers" of Chris Crane within the meaning of *Electrical Workers Local 323 (J. F. Hoff Electric)*, 241 NLRB 694 (1979), enfd. sub nom. *J. F. Hoff Electric v. NLRB*, 642 F.2d 1266 (D.C. Cir. 1980), cert. denied 451 U S 918 (1981), and *Operating Engineers Local 450 (Linbeck Construction)*, 219 NLRB 997 (1975), enfd. sub nom. *Linbeck Construction v. NLRB*, 550 F.2d 311 (5th Cir. 1977).[6] In essence, the Respondent argues that it lawfully should be able to interdict any person supplying *anything* to a construction industry employer with which it has a primary dispute. We disagree.

In *Linbeck*, *Hoff Electric*, and their progeny, we made clear that only *suppliers* providing materials essential to the primary employer's normal operations or solely for the use of the primary's employees may lawfully be picketed. See, e.g , *Electrical Workers Local 211 (Atlantic County Authority)*, 277 NLRB 1041, 1044 (1985) (delivery of generator essential to primary employer's normal operation breached neutrality of gate), *J. F. Hoff Electric Co. v. NLRB*, 642 F 2d at 1275 (court finds it significant that supplier delivered products used only by primary). And, as articulated by the Court of Appeals for the District of Columbia in *Hoff Electric*, "[t]he commonsense notion of a supplier is a party which delivers goods for the *direct use* of the primary employer in the *primary course* of its business." (Emphasis added) Id. at 1274.

Unlike *Linbeck*, where the general contractor supplied the primary paving subcontractor with gravel "essential to the primary's normal operations" of paving parking lots and installing storm sewers,[7] the support services provided by Woods do not relate directly to the structural steel work that Woods hired Chris Crane, the primary here, to perform nor are they used solely by the primary's employees. Similarly, this case is unlike *Hoff Electric* and *Atlantic County Authority* where the electrical fixtures that the project owner provided the primary electrical subcontractor (Hoff), and the emergency standby generator supplied to the electrical subcontractor (Atlantic), were for the "direct use" of those subcontractors in their "primary course . . . of business." Thus, Woods contracted with Chris Crane to erect structural steel and provide some crane services on the Paradise Market Place jobsite. While food, sanitation, trash removal, telephone, and electrical services are of obvious benefit to Chris Crane, as they are to all jobsite employers receiving these services, they do not directly relate to Chris Crane's "normal operations," or, indeed, to the purpose for which it was hired. Rather, they are merely common, incidental, support services unrelated to the "primary course of [Chris Crane's] business." In the absence of evidence that such support services are provided solely to the primary, we do not view the companies providing support services to numerous contractors at the common situs or, indeed, suppliers of similar peripheral support services to numerous contractors at the common situs as "suppliers" within the meaning of *Linbeck* and *Hoff Electric*.

Finally, there are strong policy grounds for rejecting the Respondent's argument that it should be entitled to picket persons providing *any* service to Chris Crane, the primary As we recognized in *Markwell & Hartz*, supra, there is a close relationship between construction industry employers that "is not only characteristic of but almost inevitable at many stages of a building construction project." 155 NLRB at 327. Thus, painters rely on carpenters to construct their work surfaces, on sheetmetal workers to provide necessary ventilation, and on elevator contractors to enter their worksite. Indeed, every common situs construction industry employer is likely to have some kind of relationship with other employers on the situs. To allow picketing in all instances where such connections exist between jobsite contractors, however, would eviscerate the reserve-gate doctrine, to which we adhere, and would seriously undermine the purposes for which Section 8(b)(4)(B) was enacted

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Iron Workers Local 433, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

Keltner W Locke, for the General Counsel
David A. Rosenfeld (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.

[5] *Iron Workers Local 433 (Oltmans Construction)*, supra at 1186 See also *Carpenters Local 316 (Thornhill Construction)*, 283 NLRB 81, 82 (1987)

[6] To the extent there are contrary implications in *Operating Engineers Local 12 (McDevitt & Street)*, supra, they are disavowed

[7] *Linbeck Construction Corp v NLRB*, supra at 317–318

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried before me in Las Vegas, Nevada, on December 8, 1987,[1] pursuant to a complaint issued by the Regional Director of the National Labor Relations Board for Region 31 on October 21. It is based on a charge filed by Chris Crane Company (the Charging Party or Chris Crane) on September 18. The complaint alleges that Iron Workers Local 433, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO (the Union or Respondent) has engaged in certain violations of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (the Act).

Issue

The principal issue is whether Respondent was privileged, during a 3-day period in September, to picket a neutral gate at a construction site in Las Vegas or whether that picketing violated Section 8(b)(4)(i) and (ii)(B) as an effort to enmesh neutral employers in a dispute which was not their own.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally and to file briefs. Both the General Counsel and Respondent have filed briefs which have been carefully considered.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. CHRIS CRANE'S BUSINESS

Chris Crane is a general partnership engaged in the construction business principally as a steel erection and crane and rigging subcontractor. Its partners are Grant and Becky Cox, Orlando Langford, Richard Wood, and Mike Allord. On the Nevada project in question, it purchased structural steel valued in excess of $200,000 directly from a Utah supplier. As a result of that purchase, I find that Chris Crane is an employer engaged in interstate commerce and in an industry affecting interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times it has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The construction site in question is known as the Paradise Market Place located in Las Vegas at the intersection of Sand Hill and Flamingo Boulevards. The project involves a one-story, L-shaped building which ultimately will house a supermarket and two or three retail shops. The general contractor is Joe E. Woods, Inc. (Woods). Woods has hired numerous subcontractors to perform various portions of the work. One of the subcontractors is Chris Crane, which has agreed to erect the structural steel and to provide certain crane services. Chris Crane is a nonunion employer, and the Union has had an ongoing dispute with it since at least September 1986.[2]

Also at the jobsite are a reinforcing steel subcontractor, Century Steel, a masonry subcontractor, Marnell Masonry and J & J Construction, a concrete placement company. Altogether, there are approximately 30 subcontractors on the site, of which 25 were hired directly by Woods and five hired either by the project's owner or by the supermarket chain, a lessee.

The project actually began in mid-June. Although the record is not clear with respect to the dates, a reserve gate system was already in effect to separate the concrete materialman, Bonanza Ready-Mix, from other neutrals in a labor dispute unrelated to this one. On September 9 the Operating Engineers Union began picketing Chris Crane and Woods caused Crane's name to be handwritten in heavy black ink on both the pre-existing neutral and primary gates. That was accomplished on September 11. According to Douglas Hutchison, Joe E. Woods' project superintendent, Respondent began picketing Chris Crane on September 16. Neither the September 16 nor September 17 picketing is, strictly speaking, part of this complaint.[3]

On September 18, Respondent's neutral gate picket, Steve Bova, arrived at the site about 5 a.m.[4] Bova did not actually picket between 5 a.m. and 9 a.m. but closely observed the Operating Engineers' pickets patrol the neutral gate. At approximately 9 a.m., Hutchison approached the IUOE picket, who apparently was that union's business manager, and informed him that the reserve gate system had been reestablished and he was improperly picketing a neutral gate. Hutchinson testified the IUOE picket obliged and promptly removed himself to the primary gate. However, Bova told Hutchison that the gate had been tainted, and began to picket it himself with Respondent's sign. Hutchison testified that he told Bova he had a "legal two-gate system" and Bova should move to the primary gate. It is undisputed that Bova replied, "That's nice," and refused to move, asserting that the gate had been tainted. When Hutchison asked what evidence Bova was relying upon to reach that conclusion, Bova showed him a document entitled "Neutral Gate Report" which Respondent's officials had given him to maintain a record of occurrences at the neutral gate. On the report Bova had listed the license numbers of vehicles which had passed through the gate. He also

[1] All dates are 1987 unless otherwise indicated.

[2] The dispute has previously been before the Board. See *Ironworkers Local 433 (Chris Crane Co.)*, 31–CC–1887, JD(SF)–66–87 [288 NLRB 717 (1988)], decided by Judge Holmes and now pending before the Board on the General Counsel's exceptions

[3] On September 17, due to the installation of some curbing on Sand Hill Boulevard, the gates were rendered useless and the neutral gate was moved about 30 feet. There is some confusion about what occurred that day. Indeed, it seems unlikely that any traffic could have gone in and out of the project at those locations that day.

[4] Bova asserts that this incident occurred on September 17 However, in view of Hutchison's more credible testimony that it occurred on September 18, and in view of the fact that the IUOE pickets moved from the neutral to the primary gate at Hutchison's request on September 18, I find that this incident occurred on September 18

told Hutchison that J & J Construction had gone through that gate. Hutchison replied that Respondent did not have any dispute with J & J, thereby suggesting that J & J's use of the gate had not tainted it.

Nonetheless, Hutchison agreed to check out the license numbers of the vehicles in the parking lot against the list. After checking with officials of other firms on the site, he reported to Bova that the trucks in question belonged to or were connected with Marnell Masonry and J & J Construction. Hutchison says he also asked Bova if he knew where the employees were working who had gone through the gate and Bova replied by pointing to a scaffold. Hutchison says he told Bova that the people who were working at that location were employed by Marnell. At that point, according to Hutchison, another man walked over from the primary gate and told Bova not to talk to Hutchison any more. Bova then gave Hutchison a business card showing the name and telephone number of the Union's business manager, but continued to picket.

Bova testified that on the day in question he observed Hutchison approach the IUOE picket and tell him there was a two-gate system in effect saying the IUOE was in violation. He says Hutchison "may have spoken to me, but I didn't answer." Furthermore, Bova asserts that Hutchison did not say anything to him about a two-gate system. He says he remembers the IUOE picket claiming the gate had been tainted that morning because there was no sign at the neutral gate. He remembers telling Hutchison he could not talk to him but to see his union representative. Bova gave him the union representative's business card.

It appears that sometime that morning Hutchison had, in addition to his conversation with Bova, sent a telegram to the Union advising it of the reestablishment of the reserve gate. Although there is some question with respect to whether the Union received it on September 18 or on September 19, by mail, I find that Hutchison's oral message to Bova was directed at a proper person. It is true that Respondent denies that Bova was an agent for the purpose of receipt of information, but I find by his having a neutral gate report in hand and having been charged with the duty of reporting matters which occurred at the neutral gate, that Bova was an agent for the purpose of receiving information about the neutrality of the gate. Furthermore, I found him to be less than candid about what Hutchison told him. He asserts that Hutchison did not speak to him directly and that, accordingly, he was not obligated to report whatever he heard. Frankly, that is an artifice which demonstrates deceit on his part. Even so, Bova admits hearing Hutchison advise the IUOE picket that the reserve gate had been reestablished. Since the IUOE was also picketing Chris Crane, whatever information Hutchison gave to the IUOE about Chris Crane applied equally to Respondent. In any event, I am convinced that Hutchison was speaking both to the IUOE and to Bova even though Bova had not yet unlimbered his Ironworkers' picket sign. Since Bova had been picketing on the 2 previous days, it seems likely that Hutchison easily recognized Bova as Respondent's picket.

Curiously, Bova does not acknowledge having shown his record sheet to Hutchison for the purpose of checking license plates. Instead, he asserts that the neutral gate had been breached that morning by a man driving a silver-grey El Camino. It appears that at 8:40 a.m. on September 18, that vehicle exited the neutral gate. According to Bova, on the previous day he had observed its driver through binoculars connect iron. From that he concluded that the man was an ironworker employed by Chris Crane.

Another of Respondent's pickets, Darmond Broyles, also testified. He was the picket at the primary gate. Broyles says the man in the El Camino had entered the jobsite through the primary gate and he thinks it was on September 18. He says he observed the man upon the bar joists on the top of the supermarket and concluded that the man "looked like" an ironworker.

Grant Cox, Chris Crane's partner who was managing its portion of the job, was shown Respondent's photograph of the man driving the El Camino as he exited the neutral gate at 8:40 a.m. that day. He testified the driver was not a Chris Crane employee.

Woods' Hutchison testified, in conclusion, that he observed Respondent's pickets at the neutral gate for 8 hours on September 18, and that they were also present on Saturday, September 19, and Monday, September 21, patrolling both the neutral and primary gates.

IV. ANALYSIS AND CONCLUSIONS

Section 8(b)(4)(i) and (ii)(B) prohibits a labor organization from engaging in picketing where "an object" of the picketing is to enmesh or embroil persons not involved in the labor dispute, i.e., so-called neutral employers.[5] Because a construction site usually involves the common effort of a number of different employers, it is considered to be a "common situs" within the meaning of *Denver Building Trades Council v. NLRB*, 341 U.S. 675 (1951). In order to preserve the right of neutral employers to avoid becoming enmeshed in labor disputes over which they have no control, the Supreme Court approved the so-called reserve or neutral gate tactic which permits neutrals to distance themselves from the primary disputants. One gate is reserved for the primary disputants while all others may use the neutral gate. See *Electrical Workers IUE Local 761 v. NLRB*, 366 U.S. 667 (1961). Under such a system, while any neutral is free to use the pri-

[5] In pertinent part Sec 8(b)(4)(i) and (ii)(B) reads as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(4)(i) To engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case *an object thereof is*—

(B) forcing or requiring any person . . . to cease doing business with any other person *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing . . . . [Emphasis added.]

mary disputants' gate if they wish to run the gauntlet of pickets, the primary employer and his suppliers are required to use it If either the primary employer or his suppliers use the gate reserved for neutral employers, the primary will be declared "present" at the neutral location and the legal fiction of their having a separate primary situs will have been destroyed If that occurs, the union picketing the primary is then free to picket the neutral gate because it is no longer "neutral" See, for example, *Operating Engineers Local 450 (Linbeck Construction)*, 219 NLRB 997 (1975) If that does not occur, the primary union is not privileged to picket the neutral gate. If it does so, the Board will find that an object of the picketing was to enmesh those neutrals in a dispute not their own *Electrical Workers*, supra, *Carpenters Local 470 (Mueller-Anderson, Inc)*, 224 NLRB 315 (1976), enfd. 564 F 2d 1360 (9th Cir 1977)

It is true that due to physical circumstances, pickets can become confused over whether the neutral gate is actually neutral or over whether a taint has occurred Perhaps such confusion did occur on either September 16 or 17 when the gates were moved and the signs temporarily taken down during the curbstone installation. Even so, on the morning of September 18, Hutchison quite clearly reestablished the neutrality of the gate when he informed both the IUOE and Bova that the neutral gate system had been reestablished I have already found that Bova was an appropriate representative of Respondent to whom such information could be given Bova, however, ignored the advice and did not even consult or discuss the matter with any union official. He decided not do so on the probably false and certainly flimsy ground that Hutchison had not spoken to him, but only to the IUOE Furthermore, I credit Hutchison's testimony that Bova instead argued that the gate had been tainted either by the passage of some vehicles, which turned out to be connected to other neutral employers, or because he and his co-picket, Broyles, had concluded that the El Camino driver was an ironworker employed by Chris Crane. Yet, they did not know that individual's name, did not know by whom he was employed, and did not know exactly what he was doing on the site Even assuming that he was an ironworker, and that Broyles' observation that the individual was observed wearing an ironworker's tool belt (known in the trade as a "spud" belt), it would not follow that he was employed by Chris Crane Also on the site was another ironworker contractor, Century Steel, who was engaged in certain reinforcing ironwork It may well be that structural iron and reinforcing iron work are somewhat different, but given the fact that Grant Cox could not identify the individual and did not know who he was, and the fact that other ironworkers were at the site, it seems quite likely that the individual may have been employed by Century Steel. Nonetheless, Broyles and Bova concluded that he was a Chris Crane ironworker. Quite frankly, they jumped to an unwarranted conclusion most unreasonable in the circumstances

Indeed, I find that these pickets were only too eager to look for excuses to picket the neutral gate As the Board held in *Plumbers (Hanson Plumbing)*, 277 NLRB 1231, 1233 (1985), "Section 8(b)(4) places the burden on *labor organizations* to conduct themselves in primary disputes in such ways as will not needlessly entangle neutral employers" The statute clearly imposes, according to the Board, a strong burden on a labor organization engaged in a primary dispute to make reasonable efforts to determine whether individuals are primaries or neutrals Indeed, in *Electrical Workers IBEW Local 302 (ICR Electric)*, 272 NLRB 920 (1984), this administrative law judge, in analyzing the union's object, observed that the union had taken careful steps to avoid enmeshing neutrals, such as covering picket signs to avoid the appearance of picketing when neutrals might observe them, picketing at the place when the primary was supposed to be, and picketing during hours where it was unlikely to catch a neutral's attention I further observed that had the union there been engaging in reckless picketing, the result might have been different. Here, it seems to me, Respondent's picketing was more than merely reckless Neither Bova nor Broyles knew or made any effort to find out who the individuals were who had entered the neutral gate. They just made bald assertions of taint without knowing the truth. Certainly that is at least reckless, if not an out-and-out lie Given their recklessness and lack of probity, I have no difficulty in finding that they made no reasonable effort to ascertain the neutrality of the people using the neutral gate Respondent has, therefore, failed to prove that the neutrality of the gate was breached [6]

Respondent makes one final effort to show that the neutral gate was a location where it could lawfully picket It asserts that the general contractor, Woods, provided services to all of the contractors at the site, including Chris Crane It asserts that, under the *Carrier* doctrine,[7] delivery of any essential product or service to the primary through the neutral gate taints it and privileges the Union's picketing there In this regard, it observes that Woods had, through various business arrangements, provided its subcontractors with services such as chemical toilets, telephones, electric power, refuse pickup, and a mobile caterer. It further observes that all of the subcontractors on the site, including Chris Crane, benefited from Woods' provision of these services However, the Board has clearly held that at least some of these services are not the sort which would taint the gate Specifically, it has twice held that the entry of a chemical toilet service company through the neutral gate is not a cognizable breach of the system *Carpenters Local 1622 (Specialty Building Co.)*, 262 NLRB 1244 (1982); *Operating Engineers Local 12 (McDevitt & Street Co)*, supra. *McDevitt* also held that a mobile caterer is not a supplier of the

[6] I do not find the September 17 incident involving a purported Chris Crane employee being driven by a friend through the neutral gate during a lunch hour as having been a breach of the neutrality of the gate The incident occurred prior to the reestablishment of the gate's neutrality on September 18 Moreover, the delivery of structural steel on September 22 does not show a pattern of breach In any event, it is well established that subsequent breaches do not justify earlier picketing *Nashville Bldg Trades Council (Collins Co)*, 172 NLRB 1138, 1139–1140 (1968), *Operating Engineers Local 12 (McDevitt & Street)*, 286 NLRB 1203 (1987)

[7] *Steelworkers v NLRB*, 376 U S 492 (1964), *Linbeck Construction*, supra, *Electrical Workers (IBEW) Local 323 (Hoff Electric)*, 241 NLRB 694 (1979)

primary circumstances identical to those presented here In this case, it even appears that the mobile caterer had been coming to the site even before Woods' superintendent arrived It certainly did not serve Chris Crane exclusively

In any event, the Board in *McDevitt* clearly held that such a situation did not warrant picketing the neutral gate In that case, the Board also said that a supplier's delivery to the primary through the neutral gate would privilege picketing only if it was providing something "essential" to the primary's operations To date, the only examples which the Board has given have been building materials, such as gravel (*Linbeck*, supra) or lighting fixtures (*J. F. Hoff Electric Co. v. NLRB*, 642 F 2d 1266 (D C Cir 1980), cert denied, 451 U S 918 (1981))

Thus, refuse collection is a service, not a building material and it therefore does not qualify as a legitimate analogy, even as a service it may not be "essential" to Chris Crane. Chris Crane's refusal seems to be limited to some shipping bands and some waste paper, an infinitesimal amount of the refuse that a construction site would generate However, it is unnecessary to decide the question because refuse collection did not occur at the site during the days in question. Indeed, it does not appear that refuse collection will occur at this project until much later on

Finally, although it seems likely that Chris Crane uses the telephone and electrical power and was probably using them during the days in question, those are not building materials I agree that electrical power appears to be essential to operate the welding machines which the employer no doubt utilizes, but the electricity is certainly not supplied for Chris Crane's exclusive use Any contractor utilizing power tools would have access to the same power and, since it was not provided for the primary's exclusive use, it would seem to fall into the same category as the lunch truck

Thus, even though electric power may be essential to the primary's task, it is equally essential to all other contractors, none of whom could operate without it. If electric power were declared an essential delivery to the primary and therefore were to privilege a union to picket a neutral gate, it would totally thwart the concept of separation of neutrals from primaries Clearly that cannot be permitted because it would undermine the entire policy of Section 8(b)(4)(B) If that is to be the result, the Union should look to the Congress for legislative assistance,[8] not to the Board or the courts They have already declared the policy and I am not at liberty to disregard it Accordingly, I conclude that none of the items which Respondent points to warrant the conclusion that the neutral gate was a location of the primary disputant, Chris Crane Therefore, Respondent was not privileged to picket that location at all during the days in question

I observe here that there are fact patterns, and this approaches it, where a union pickets a primary disputant in what appears to be a lawful manner but because its object is nonetheless unlawful as proven by other evidence, even facially lawful picketing is unlawful See, for example, *Electrical Workers IBEW Local 11 (Electric Contractors)*, 154 NLRB 766 (1965) Given this Union's reckless desire to picket anything that moved, it can hardly be said that its object was anything other than the enmeshment of neutrals That being the case, Respondent's picketing would appear to have been unlawful no matter what the location was

On the foregoing findings of fact and the entire record, I hereby make the following

CONCLUSIONS OF LAW

1 Chris Crane Company is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act

2 Respondent, Iron Workers Local 433, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act

3 By picketing the neutral gate at the construction site known as the Paradise Market Place in Las Vegas, Nevada, on September 18, 19, and 21, 1987, with an object of forcing neutral persons, such as Joe E Woods, Inc and its subcontractors, to cease doing business with Chris Crane Company, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act Although I find a broad order appropriate due to Respondent's recent propensity to violate Section 8(b)(4)(B)[9] I, nonetheless, decline to grant a visitatorial[10] clause, for it will not deter future violations It would appear that a contempt proceeding is the only remedy left to do that

Based on the foregoing findings of fact and conclusions of law, I issue the following recommended[11]

ORDER

The Respondent, Iron Workers Local 433, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Picketing at construction site gates reserved for neutrals, or in any other manner inducing or encouraging employees of Joe E Woods, Inc any of its subcontractors, or any other person engaged in commerce or in an

[8] Proposed legislation repealing the holding of *Denver Building Trades*, supra, has been introduced several times in the recent past

[9] *Ironworkers Local 433 (Benchmark Constructors)*, 285 NLRB 1089 (1987), and cases cited therein

[10] *Cherokee Marine Terminal*, 287 NLRB 1180 (1988)

[11] If no exceptions are filed as provided by Sec 102 46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102 48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

industry affecting commerce, to refuse in the course of their employment to perform any service where an object thereof is to force or require those employers, or any other person to cease doing business with Chris Crane, with each other, or with any other person

(b) Picketing at construction site gates reserved for neutrals, or in any other manner threatening, coercing, or restraining Joe E. Woods, Inc. any of its subcontractors, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require those employers, or any other person to cease doing business with each other, Chris Crane, or any other person.

2 Take the following affirmative action necessary to effectuate the policies of the Act

(a) Post at business office and meeting halls, copies of the attached notice marked "Appendix "[12] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material

(b) Sign and mail sufficient copies of the notice to the Regional Director for Region 31 for posting by Chris Crane Company and/or Joe E Woods, Inc. and Woods' subcontractors on the Paradise Market Place project, should they wish to do so, at all locations where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT picket at construction site gates reserved for neutrals, or in any other manner induce or encourage employees of Joe E. Woods, Inc. any of its subcontractors, or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any service where an object thereof is to force or require those employers, or any other person to cease doing business with Chris Crane, with each other, or with any other person

WE WILL NOT picket at construction site gates reserved for neutrals, or in any other manner threaten, coerce, or restrain Joe E. Woods, Inc. any of its subcontractors, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require those employers, or any other person to cease doing business with each other, Chris Crane, or any other person

IRON WORKERS LOCAL 433, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board "